

CHAPTER 399-G

LICENSING OF MONEY TRANSMITTERS

399-G:1 Definitions. In this chapter:

I. “Authorized delegate” means a person a licensee designates to provide money transmission services on behalf of the licensee.

II. “Commissioner” means the bank commissioner.

III. “Department” means the banking department.

IV. “Direct owner” means any person, including individuals, that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of 10 percent or more of the applicant or licensee.

V. “Indirect owner” means, with respect to direct owners and other indirect owners in a multilayered organization:

(a) In the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25 percent or more of that corporation;

(b) In the case of an owner that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25 percent or more of the partnership’s capital;

(c) In the case of an owner that is a trust, the trust, each trustee, and each beneficiary of 25 percent or more of the trust;

(d) In the case of an owner that is a limited liability company (LLC):

(1) Those members that have the right to receive upon dissolution, or have contributed, 25 percent or more of the LLC’s capital; and

(2) If managed by elected managers, all elected managers; and

(e) In the case of an indirect owner, the parent owners of 25 percent or more of their subsidiary.

VI. “Licensee” means a person duly licensed by the commissioner under this chapter.

VII. “Monetary value” means a medium of exchange, whether or not redeemable in money.

VIII. “Money transmission” means engaging in the business of selling or issuing payment instruments or stored value, or receiving money or monetary value for transmission to another location.

IX. “Payment instrument” means any electronic or written check, draft, money order, traveler’s check, or other electronic or written instrument or order for the transmission or payment of money or monetary value, sold or issued to one or more persons, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

X. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, 2 or more persons having a joint or common interest, or any other legal or commercial entity however organized.

XI. "Principal" of the applicant or licensee means an owner with 10 percent or more ownership interest in the applicant or licensee, a corporate officer, director, member, general and limited liability partner, limited partner with 10 percent or more ownership interest, trustee, beneficiary of 10 percent or more of the trust that owns the applicant or licensee, senior manager, and any person occupying similar status or performing similar functions.

XII. "Principal office" means the main office location of a person required to be licensed under this chapter.

XIII. "Publicly traded" means a company whose securities are traded on a securities exchange system approved and supervised by the Securities and Exchange Commission, including but not limited to the NYSE, AMEX, BSE, and NASDAQ. The term also includes a public reporting company that is subject to sections 12 or 15(d) of the Securities Exchange Act of 1934.

XIV. "Stored value" means monetary value that is evidenced by an electronic record.

399-G:2 Application of Chapter.

I. This chapter authorizes the banking department to regulate persons that engage in the business of money transmission.

II. Any money transmitted under the provisions of this chapter shall be further governed by any other applicable laws of the state of New Hampshire.

III. Notwithstanding any provisions to the contrary, nothing within this chapter shall restrict the right of the attorney general to enforce the provisions of RSA 358-A:2, XIII, regarding the issuance and terms of stored value cards which are gift certificates as defined by RSA 358-A:1, IV-a.

IV. Persons subject to or licensed under this chapter shall abide by applicable federal laws and regulations, the laws and rules of this state, and the orders of the commissioner. Any violation of such law, regulation, or rule is a violation of this chapter.

V. Licensing in the state of New Hampshire under this chapter does not constitute a finding that the commissioner has passed in any way upon the merits or qualifications of such person or that the commissioner has recommended or given approval to any person. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with the provisions of this paragraph.

VI. Any license or registration fee required by this chapter shall be paid before a license or registration becomes effective.

399-G:3 License Required. Any person not exempt under RSA 399-G:4 that, in its own name or on behalf of other persons, engages in the business of money transmission shall obtain a license from the banking department.

399-G:4 Exemptions. The provisions of this chapter shall not apply to:

I. Any bank, trust company, savings and loan association, profit sharing and pension trust, credit union, thrift company, insurance company, or receivership, which may be chartered by this state or any other state or by any agency of the United States.

II. The United States or any department, instrumentality, or agency thereof.

III. A state, county, city, or any other governmental agency or governmental subdivision of a state.

IV. Electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a state or governmental subdivision, agency, or instrumentality thereof.

V. Retailers issuing stored value credits or gift cards.

VI. Other persons not within the intent of this chapter as the commissioner may designate by rule or order.

399-G:5 License Application; Requirements; Investigation.

I. To be considered for licensing, each person shall complete and file with the department one verified application prescribed by the commissioner. At a minimum, the application shall state the primary business address of the applicant, the applicant's tax identification number, the address of its principal office and all authorized delegates located or to be located within the state, and a list of the principals of the applicant. Each principal and indirect owner shall provide their social security number and shall authorize the commissioner to conduct a background check. The applicant shall submit any other information that the commissioner may require including, but not limited to, the applicant's form and place of organization, the applicant's proposed method of doing business, the qualifications and business history of the applicant and those persons listed in the application, and the applicant's financial condition and history. The applicant shall disclose whether the applicant or any of its principals or indirect owners has ever been issued or been the subject of an injunction or administrative order, has ever been convicted of a misdemeanor involving the financial services industry or any aspect of the financial services business or has ever been convicted of any felony.

II.(a) The license issued for the licensee's principal place of business shall be referred to as a "principal office license." Each additional authorization to conduct business issued for money transmission occurring in a location in this state that is separate from the licensee's principal place of business shall be referred to as an "authorized delegate registration." If the applicant desires to transmit money in more than one location, the commissioner, upon favorable action on the applicant's principal office license, shall issue an "authorized delegate registration" for each location where the business of money transmission is to be conducted.

(b) Each license application shall be accompanied by a nonrefundable application fee of \$500 for each principal office and \$25 for each authorized delegate registration, up to a maximum annual fee of \$4,000. Sums collected under this chapter shall be payable to the state treasurer as restricted revenue and credited to the appropriation for the commissioner, consumer credit administration division.

(c) Each applicant shall submit detailed financial information sufficient for the commissioner to determine the applicant's ability to conduct the business of a money transmitter with financial integrity. The application shall include a statement of net worth in all cases and an applicant shall demonstrate and maintain a positive net worth computed in accordance with generally accepted accounting principles. Net worth statements provided in connection with a license application under this section shall be subject to review and verification during the course of any examination or investigation conducted under the authority of RSA 399-G:13. Each money transmitter applicant shall post a continuous surety bond in the amount of \$100,000. The surety bond shall be payable to the state of New Hampshire and the bank commissioner of the state of New Hampshire for the benefit of any person who is damaged by any violation of this chapter

and shall be conditioned upon the licensee's compliance with each provision of this chapter. Surety bonds shall include a provision requiring the surety to give written notice to the commissioner 20 days in advance of the cancellation or termination of the bond. Every bond shall provide that no recovery may be made against the bond unless the state makes a claim for recovery or the person brings suit naming the principal within 6 years after the act upon which the recovery or suit is based. The obligations of the surety shall survive the bankruptcy, insolvency, liquidation, or reorganization of the licensee, including, without limitation, any bankruptcy, insolvency, liquidation, or reorganization commenced by or against the licensee under any applicable state or federal law, including the United States Bankruptcy Code.

(d) Unless the applicant is a publicly traded corporation, the department shall complete a background investigation and criminal history records check on the applicant's principals and any person in a similar position or performing similar functions. If the applicant is a subsidiary, the department shall complete a background investigation and criminal history records check on individuals who are indirect owners.

(e) The persons described in subparagraph (d) shall submit to the department a notarized criminal history records release form, as provided by the New Hampshire division of state police, which authorizes the release of the person's criminal records, if any. The person shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the banking department. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints is necessary in order to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

(f) The department shall submit the criminal history records release form to the New Hampshire division of state police, which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.

(g) The department may require the applicant or licensee to pay the actual costs of each background investigation and criminal history records check.

III. Every applicant for licensing under this chapter shall file with the commissioner, in such form as the commissioner prescribes by rule, irrevocable consent appointing the commissioner to receive service of any lawful process in any non-criminal suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous application need not file another. Any other person who engages in conduct regulated by this chapter shall be deemed to have appointed the commissioner as its agent. Service may be made by leaving a copy of the process in the office of the commissioner along with \$5, but is not effective unless:

(a) The plaintiff, who may be the attorney general in a suit, action, or proceeding instituted by him or her, forthwith sends a notice of the service and a copy of the process by registered mail to the defendant or respondent at such person's last address on file with the commissioner; and

(b) The plaintiff's affidavit of compliance with this paragraph is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

IV. Upon the applicant's filing of the complete application and payment of the required fee, the commissioner shall have, in accordance with RSA 541-A:29, up to 120 days to investigate and determine whether the applicant's financial resources, experience, personnel, and record of past or proposed conduct warrant the public's confidence and the issuance of a license.

V. The commissioner may license or register individuals or firms by means of or through the facilities of a national organization which facilitates registration and licensing on a nationwide basis.

399-G:6 License and Registration Grant.

I. If the commissioner determines that the applicant meets the requirements of this chapter, then the commissioner shall issue a license and or registrations permitting the applicant to engage in the business of money transmission in accordance with the laws of this state.

II. Each license issued under the provisions of this chapter shall state the name and address of the principal office of the licensee. Each registration issued under the provisions of this chapter shall state the name and address of the authorized delegate location for which that registration is issued.

III. If a licensee is a person other than a natural person, the license issued to it shall entitle all officers, directors, members, partners, trustees, and employees of the licensee to engage in the business of money transmission; provided that one officer, director, member, partner, employee, or trustee of such person shall be designated in the license as the individual to be contacted for purposes of this chapter.

IV. If the licensee is a natural person, the license shall entitle all employees and authorized delegates of the licensee to engage in the business of money transmission.

V. A license or registration issued under this chapter shall not be transferable or assignable between persons without obtaining the approval of the commissioner before the assignment or transfer.

VI. Money transmitters, who sell or issue payment instruments or stored value, or receive money or monetary value for transmission to another location shall be liable to customers for the amount of money as well as any fees paid by the customer and received by the money transmitter, authorized delegate or person acting on his or her behalf, if the money fails to reach its intended recipient unless transmission to the recipient is prohibited by law.

399-G:7 License Denial; Appeal.

I. If the commissioner determines that the applicant fails to meet the requirements of this chapter, the commissioner shall immediately, in writing, notify the applicant of that determination.

II. Applicants may appeal a license denial in accordance with RSA 541-A and rules of the commissioner adopted thereunder.

III. Applicants may petition the department for a rehearing in accordance with RSA 541 if the decision in an appeal conducted pursuant to paragraph II affirms a denial of a license application.

399-G:8 License or Registration Term; Renewal.

I. Each license or registration shall remain in force until it has been surrendered, revoked, or suspended, or expires in accordance with the provisions of this chapter. Each license or registration shall expire on December 31 of each calendar year.

II. If a person holds a valid license or registration under this section and is in compliance with this chapter and the rules thereunder, such licensee may renew the license or registration by paying the required fee to the banking department on or before December 1 for the ensuing year that begins on January 1. Failure to renew the license or registration shall result in the license or registration terminating on December 31.

III. A renewal fee of \$500 for the principal office license and \$25 for each authorized delegate registration, up to a maximum annual fee of \$4,000, shall be submitted with the application for license renewal.

IV. No application for renewal shall be denied without reasonable cause and the right of appeal pursuant to RSA 541-A and RSA 541.

399-G:9 License Posting. It shall be unlawful to engage in the business of money transmission without a conspicuously posted license in the licensee's principal place of business within this state or a conspicuously posted registration in each of the licensee's authorized delegate offices within this state.

399-G:10 Change in Name; Ownership; Location.

I. No licensee shall conduct the business of a money transmitter under a trade or other name that is different from the name stated in its principal office license without immediately notifying the commissioner, who shall then amend the license and any registrations accordingly.

II. A licensee shall submit written notification to the department of the addition or deletion of a principal and shall provide the name and address of each new principal no later than 30 days after such change. Each new principal shall authorize the commissioner to conduct a background check. The commissioner shall investigate management and ownership changes including, but not limited to, each principal's qualifications and business history. The licensee shall disclose any injunction or administrative order that has been issued against the principal and whether the principal has been convicted of a misdemeanor involving the money transmission industry or any aspect of the money transmission business or convicted of any felony, prior to the commissioner's approval of such change.

III. Licensees shall provide written notice to the department of any change in location or closing of any office no later than 30 business days following the effective date of such change of location or closing. In the case of an emergency, as determined by the commissioner, a licensee may close a registered authorized delegate office and provide notice of the closure to the department within 2 business days. Failure to comply with the provisions of this paragraph shall be sufficient cause for license revocation or denial of license renewal applications.

IV. Persons licensed under this chapter are under a continuing obligation to update information on file with the commissioner. If any information filed with the commissioner becomes materially inaccurate, the licensee shall promptly submit to the commissioner an amendment to its application that will correct the information on file with the commissioner. An amendment shall be considered filed promptly if the amendment is filed within 30 days after the event that requires the filing of the amendment. Certain significant events as defined by rule shall be reported to the department in writing within 10 calendar days.

399-G:11 License Surrender.

I. A licensee who ceases to engage in the business of a money transmitter at any time during a license year for any cause, including but not limited to bankruptcy, license revocation, or voluntary dissolution, shall surrender such license and office registrations, if any, in person or by registered or certified mail to the commissioner within 15 calendar days of such cessation of business, and shall cause to be published in a newspaper of general circulation in the licensee's market area a notice to such effect. The commissioner shall adopt rules, in accordance with RSA 541-A, relative to such notice.

II. Withdrawal of the surrendered license and office registrations, if any, shall become effective 30 days after receipt by the commissioner or within such shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the license is surrendered or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the license is surrendered. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines. The commissioner may nevertheless institute a

revocation or suspension proceeding under RSA 399-G:18 within one year after withdrawal became effective and may enter a revocation or suspension order as of the last date on which the license was effective.

III. Failure to comply with the provisions of this section and rules adopted under this section shall be cause for denial of future license applications and the imposition of penalties under RSA 399-G:21.

399-G:12 Record Keeping.

I. The licensee shall maintain such records as will enable the department to determine whether the licensee's business is in compliance with the provisions of this chapter and the rules adopted pursuant to this chapter. Such records shall be maintained and made available for examination at the licensee's principal office or its authorized delegate location or the office of its New Hampshire agent for a period of at least 5 years or longer if the commissioner prescribes a period by rule. Licensees may maintain photocopies, microfilm, or microfiche copies of original documents.

II. Those licensees that maintain their files in another state are required to return the files to their principal New Hampshire office or the office of their New Hampshire agent for examination no later than 21 calendar days after being requested to do so by the department. Failure to provide files and documents shall subject a licensee to a fine of \$50 per day for each day after 21 days the files and documents are not produced. Failure to provide files and documents within 60 days after being requested to do so by the department, shall be sufficient cause for license revocation, suspension, or denial.

III. A licensee shall keep and use business records in such form and at such location as the commissioner shall by rule determine. The records shall enable the commissioner to determine whether the licensee is complying with the provisions of this chapter, any rules adopted under it, and any other law, rule, or regulation applicable to the conduct of the business for which it is licensed under this chapter. The rules may contain provisions for records to be recorded, copied, or reproduced by any process which accurately reproduces or forms a durable medium for reproducing the original record or document, or in any other form or manner authorized by the commissioner. Nothing in this section shall be construed to permit any licensee to destroy original records or documents. Each licensee shall preserve all such business records for as long a period as the commissioner shall prescribe by rule.

399-G:13 Examinations.

I. The department may examine the business affairs and records of any licensee or any other person, whether licensed or not, as it deems necessary to determine compliance with this chapter and the rules adopted pursuant to it. In determining compliance, the department may examine the books, accounts, records, files, and other documents or matters of any licensee or person. The department shall have the power to subpoena witnesses and administer oaths in any adjudicative proceedings, and to compel, by subpoena duces tecum, the production of all books, records, files, and other documents and materials relevant to its investigation.

II. For the purpose of discovering violations of this chapter, the banking department may examine, during business hours, the records of any licensee and of any person by whom any such loan is made, whether such person shall be licensed to act, or claim to act, as principal, agent, or other representative, or under, or without the authority of this chapter; and for that purpose, the banking department shall have access to the books, papers, records, files, and vaults of all such persons. The banking department shall also have authority to examine, under oath, all persons whose testimony it may require relative to such loans or business.

III. The affairs and records of every licensee shall be subject at any time to such periodic, special, regular, or other examination by the banking department with or without notice to the licensee. All books, papers,

files, related material, and records of assets of the licensee shall be subject to the banking department's examination.

IV. Any agent of the department may make a thorough examination into the business affairs of each licensee and shall report any violations of law, rule, or standard business practice to the department.

V. The expense of examination shall be chargeable to and paid by the licensee. The procedure for such payment shall be the same as for payments by institutions for cost of examinations under RSA 383:11, except when the principal office of the licensee or person is located outside of this state and the department has determined that the examination must be conducted at that out-of-state location, the actual cost of travel, lodging, meals, and other expenses of examination personnel employed in making examinations shall be chargeable to and paid by such licensee or person in addition to the per diem charge for examination personnel set forth in RSA 383:11.

VI. The commissioner may, in his or her discretion, accept all or a part of a report of examination of a money transmitter, certified to by the regulatory supervisory official of another state. To avoid unnecessary duplication of examinations, the commissioner, insofar as he or she deems it practicable in administering this section, may cooperate with the regulators of other states, the Federal Trade Commission, other federal regulators, or their successors in conducting examinations and investigations.

VII. Every person being examined, and all of the officers, directors, employees, agents, and representatives of such person shall make freely available to the commissioner or his or her examiners, the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination and shall facilitate the examination.

VIII. Upon receipt of a written report of examination, the licensee shall have 30 days or such additional period as the commissioner for good cause may allow, to review the report, recommend any changes, and set forth in writing the remedial course of action the licensee will pursue to correct any reported deficiencies outlined in the report.

IX. If requested by the person examined, within the period allowed in paragraph VIII, or if deemed advisable by the commissioner without such request, the commissioner shall hold a closed hearing relative to the report and shall not file the report in the department until after such closed hearing and issuance of his or her order thereon. If no such closed hearing has been requested or held, the examination report, with such modifications as the commissioner deems proper, shall be accepted by the commissioner and filed upon expiration of the review period provided for in paragraph VIII.

X. All reports pursuant to this section shall be privileged and exempt from the requirements of RSA 91-A. The comments and recommendations of the examiner shall also be exempt.

399-G:14 Annual Report.

I. Each licensee shall file, under oath, an annual report with the banking department on or before February 1 each year concerning operations for the preceding year or license period ending December 31 upon the form prescribed by the department.

II. A person who surrenders, withdraws, or does not renew a license shall file the annual report as required in paragraph I, notwithstanding the fact that he or she is not licensed on the date that the report is due.

III. Each licensee shall also file, under oath, its financial statement with the commissioner within 90 days from the date of its fiscal year end. The financial statement shall be prepared in accordance with generally accepted accounting principles with appropriate note disclosures. A money transmitter's financial statement shall include a balance sheet, income statement, statement of changes in owners' equity, a cash flow

statement, and a statement of net worth. If the financial statement filed under this section is not audited, a certification statement shall be attached and signed by an authorized officer of the licensee. The certification statement shall state that the financial statement is true and accurate to the best of the officer's belief and knowledge.

IV. The department shall publish its analysis of the information required in the licensee's annual report as a part of the commissioner's annual report.

V. Any money transmitter failing to file either the annual report or the financial statement required by this section within the time prescribed may be required to pay to the banking department a penalty of \$25 for each calendar day the annual report or financial statement is overdue up to a maximum penalty of \$2,500 per report or statement.

VI. In addition to the annual report and financial statement, the banking department may require such additional regular or special reports as it may deem necessary to the proper supervision of licensees under this chapter.

VII. Any officer, owner, manager, or agent of any licensee and any person controlling or having a contract under which he or she has a right to control such a licensee, whether exclusively or otherwise, and any person with executive authority over or in charge of any segment of such a licensee's affairs, shall reply promptly in writing, or in other designated form, to any written inquiry from the commissioner requesting a reply. The commissioner may require that any communication made to him or her under this section be verified.

399-G:15 Money Laundering Reports.

I. Licensees shall file with the commissioner copies of all reports required by federal currency reporting, record keeping, and suspicious transaction reporting requirements as set forth in 31 U.S.C. section 5313, 31 C.F.R. part 103, and other federal and state laws pertaining to money laundering with regards to money transmission transactions in this state.

II. The timely filing of a complete and accurate report required by paragraph I with the appropriate federal agency is compliance with the requirements of this section, unless the commissioner notifies the licensee that reports of this type are not being regularly and comprehensively transmitted by the federal agency to the commissioner.

399-G:16 Advertising. No licensee or other person shall advertise, print, display, publish, distribute, or broadcast, or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner whatsoever, any statement or representation with regard to the rates, terms, or conditions for money transmission under the provisions of this chapter which is false, misleading, or deceptive.

399-G:17 Consumer Inquiries.

I. Consumer complaints naming licensees under this chapter, which are filed in writing with the office of the commissioner, shall be forwarded via certified or registered mail to the licensee for response within 10 days of receipt by the department. Licensees shall, within 30 days after receipt of such complaint, send a written acknowledgment thereof to the consumer and the banking department. Not later than 60 days following receipt of such complaint, the licensee shall conduct an investigation of the complaint and either:

(a) Make appropriate corrections in the account of the consumer and transmit to the consumer and the banking department written notification of such corrections, including documentary evidence thereof; or

(b) Transmit a written explanation or clarification to the consumer and the banking department which sets forth, to the extent applicable, the reasons why the licensee believes its actions are correct, including copies of documentary evidence thereof.

II. A licensee who fails to respond to consumer complaints as required by this section within the time prescribed shall pay to the commissioner the sum of \$50 for each day such response is overdue. For purposes of this section, the date of transmission shall be the date such response is received by the commissioner.

III.(a) Licensees which, because of extenuating circumstances beyond the control of the licensee, are unable to comply with the time frames prescribed in this section, may make written request to the commissioner for a waiver of such time frames. Waivers shall not be granted or considered unless the request for the waiver:

(1) Is received by the banking department within 50 days following the licensee's receipt of the complaint;

(2) Specifies the reason for the request; and

(3) Specifies a date certain by which the licensee shall comply with the provisions of this section.

(b) Requests for waivers shall be either granted or denied within 5 days of receipt by the banking department.

399-G:18 License Revocation; Suspension.

I. The commissioner may issue an order requiring a person to whom any license has been granted or any person under the commissioner's jurisdiction to show cause why the license should not be revoked, suspended, or penalties imposed, or both, for violations of this chapter. The order shall give reasonable notice of the opportunity for a hearing and shall state the reasons for the issuance of the order. The commissioner may by order summarily postpone or suspend any license or application pending final determination of any order to show cause, or other order, or of any other proceeding under this section, provided the commissioner finds that the public interest would be irreparably harmed by delay in issuing such order. Upon the entry of the order, the commissioner shall promptly notify the respondent, applicant, or licensee that the order has been entered and of the reasons for the order and that within 10 calendar days after receipt of a written request the matter will be scheduled for hearing. Valid delivery of such order shall be by hand or certified mail at the last known principal office of the licensee, or respondent, to an officer, director, 5 percent or more owner, member, partner, or legal representative of the licensee or respondent. If the person to whom an order to show cause or other order is issued fails to request a hearing within 30 calendar days of receipt or valid delivery of the order and no hearing is ordered by the commissioner, then such person shall be deemed in default, and the order shall, on the thirty-first day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the commissioner, for good cause shown. A hearing, if requested, shall be scheduled not later than 10 calendar days after the written request for such hearing is received by the commissioner, after which and within 20 calendar days from the date of the hearing the commissioner shall enter an order making such disposition of the matter as the facts require. If the licensee or respondent fails to request a hearing within 30 calendar days of receipt or valid delivery of such order or fails to appear at a hearing after being duly notified, or cannot be located after a reasonable search, such person shall be deemed in default and the proceeding may be decided against the person upon consideration of the order to show cause or other order, the allegations of which may be deemed to be true. The commissioner may by order, upon due notice and opportunity for hearing, assess penalties or deny, suspend, or revoke a license or application if it is in the public interest and the applicant, respondent, or licensee, any partner, officer, member, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, respondent, or licensee:

- (a) Has violated any provision of this chapter or rules thereunder;
- (b) Has not met the standards established in this chapter;
- (c) Has filed an application for licensing which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;
- (d) Has made a false or misleading statement to the commissioner or in any reports to the commissioner;
- (e) Has made fraudulent misrepresentations, has circumvented or concealed, through whatever subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to a consumer under the provisions of this chapter;
- (f) Is the subject of an order entered within the past 5 years by this state, any other state, or federal regulator denying, suspending, or revoking licenses or registration;
- (g) Is permanently, preliminarily, or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of money transmission, lending, or collection activities;
- (h) Is not qualified on the basis of such factors as experience, knowledge, and financial integrity;
- (i) Has engaged in dishonest or unethical practices in the conduct of the business of money transmission;
- (j) Has violated applicable federal laws or rules thereunder;
- (k) Has made an unsworn falsification under RSA 641:3 to the commissioner; or
- (l) For other good cause shown.

II. The banking department may, upon due notice and opportunity for a hearing, suspend any license for a period not exceeding 30 days, pending investigation by the banking department.

III. Any license revocation, license suspension, or unfavorable action by the banking department on a license shall further comply with the provisions of RSA 541-A:30.

IV. The banking department may take action for immediate suspension of a license, pursuant to RSA 541-A:30, III.

V. If a licensee is a partnership, association, corporation, or entity however organized, it shall be sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation or any member of a licensed partnership has so acted or failed to act in behalf of said licensee as would be cause for suspending or revoking a license to such party as an individual.

VI. If the commissioner finds that any licensee or applicant for license is no longer in existence or has ceased to do business as a money transmitter, or cannot be located after reasonable search, the commissioner may by order revoke the license, impose penalties, or deny the application. The commissioner may deem abandoned and withdraw any application for licensure made pursuant to this chapter, if any applicant fails to respond in writing within 180 calendar days to a written request from the

commissioner requesting a response. Such request shall be sent via certified mail to the last known address of the applicant that is on file with the commissioner.

399-G:19 Violations.

I. The department may issue and serve upon any licensee or person over whom it has jurisdiction a complaint setting forth charges whenever the department is of the opinion that the licensee or person is violating or has violated any provision of this chapter or any rule or order under this chapter.

II. The department may issue a cease and desist order against any person who it has reasonable cause to believe is in violation of the provisions of this chapter or any rule or order under this chapter. Delivery of such order shall be by hand or registered mail at the principal office of the person. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order. A hearing shall be held not later than 10 days after the request for such hearing is received by the commissioner. Within 20 days of the date of the hearing the commissioner shall issue a further order vacating the cease and desist order or making it permanent. All hearings shall comply with RSA 541-A. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him or her upon consideration of the cease and desist order, the allegations of which may be deemed to be true. If the person to whom a cease and desist order is issued fails to request a hearing within 30 calendar days of receipt of such order, then such person shall likewise be deemed in default, and the order shall, on the thirty-first day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the commissioner, for good cause shown.

399-G:20 Administration by Commissioner; Rulemaking.

I. The commissioner shall administer and enforce the provisions of this chapter.

II. Pursuant to RSA 541-A, the commissioner may adopt such rules as he or she deems necessary to the administration and enforcement of this chapter. Such rules shall be consistent with the provisions of this chapter, and may include, but shall not be limited to, the following:

- (a) The application form for licensees required under RSA 399-G:5.
- (b) The form of license issued to licensees under RSA 399-G:6.
- (c) Annual reports required by RSA 399-G:14.
- (d) Personal disclosure statements to meet the requirements of RSA 399-G:5.
- (e) Fees to be charged to cover the reasonable costs of copying documents and producing reports.

III. The commissioner may prepare, alter, or withdraw such forms as are necessary to comply with the provisions of this title.

IV. The commissioner may issue, amend, or rescind such orders as are reasonably necessary to carry out the provisions of this chapter.

V. The commissioner may, for good cause shown, abate all or a portion of delinquency penalties assessed under this chapter.

VI. All actions taken by the commissioner pursuant to this chapter shall be taken only when the commissioner finds such action necessary or appropriate to the public interest or for the protection of consumers and consistent with the provisions of this chapter.

VII. In adopting rules, preparing forms, setting standards, and in performing examinations, investigations, and other regulatory functions authorized by the provisions of this chapter, the commissioner may cooperate, and share information pursuant to confidentiality agreements, with regulators in this state and with regulators in other states and with federal regulators, in order to implement the policy of this chapter in an efficient and effective manner and to achieve maximum uniformity in the form and content of applications, reports, and requirements for money transmitters, where practicable.

399-G:21 Penalty.

I. Any person who violates any provision of this chapter shall be guilty of a misdemeanor for each violation if a natural person, or guilty of a felony for each violation if any other person.

II. Any person who knowingly violates any rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to license suspension or revocation, or imposition of an administrative fine not to exceed \$2,500 for each violation in lieu of or in addition to suspension or revocation.

III. Any person who negligently violates any rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to license suspension, revocation, or denial, including the forfeiture of any application fee, or the imposition of an administrative fine not to exceed \$1,500 for each violation, in lieu of or in addition to suspension or revocation.

IV. Any person who, either knowingly or negligently, violates any provision of this chapter may, upon notice and opportunity for hearing, and in addition to any such other penalty provided for by law, be subject to license suspension, revocation or denial, including forfeiture of any application fee, or an administrative fine not to exceed \$2,500, or both. An administrative action or fine may be imposed in addition to any criminal or civil penalties imposed.

V. Every person who directly or indirectly controls a person liable under this section, every partner, principal executive officer, or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act constituting the violation, and every licensee or person acting as a common law agent who materially aids in the acts constituting the violation, either knowingly or negligently, may, upon notice and opportunity for hearing, and in addition to any other penalty provided for by law, be subject to license suspension, revocation, or denial, including the forfeiture of any application fee, or the imposition of an administrative fine not to exceed \$2,500, or both. An administrative action or fine may be imposed in addition to any criminal or civil penalties imposed. No person shall be liable under this paragraph who shall sustain the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist.

399-G:22 Records and Filings.

I. A document is filed when it is received by the commissioner. If any filing deadline date falls on a weekend or on a New Hampshire state or federal legal holiday, the due date shall be automatically extended to the next business day following such weekend or holiday.

II. Electronic filings, when received by the commissioner, are deemed filed, are prima facie evidence that a filing has been duly authorized and made by the signatory on the application or document, are admissible in

any civil or administrative proceeding under this chapter, and are admissible in evidence in accordance with the rules of superior court in any action brought by the attorney general under this chapter.

III. A licensee may maintain its records in electronic format if, upon request, the licensee provides the commissioner with:

(a) A full explanation of the programming of any data storage or communications systems in use; and

(b) Information from any books, records, electronic data processing systems, computers, or any other information storage system in the form requested by the commissioner.